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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

List of issues prior to submission of the seventh periodic report of Poland*

The Committee against Torture, at its thirty-eighth session (A/62/44, paras. 23 and 24), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (see CAT/C/POL/CO/5-6, para. 7),[1] please provide detailed information on the measures taken to adopt a definition of torture in domestic penal law consistent with article 1 of the Convention. Please indicate the measures adopted by the State party to include torture as a separate and specific crime in its legislation and to ensure that such crimes are punished with appropriate sentences, which take into account their seriousness, in accordance with the provisions of the Convention.

Article 2[2]

2. In the light of the Committee's previous concluding observations (para. 8) and the State party's follow-up replies,[3] please provide information on the steps taken and

* Adopted by the Committee at its fifty-sixth session (9 November-9 December 2015).

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.

[2] The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1), are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

[3] See CAT/C/POL/CO/5-6/Add.1, paras. 1-7.

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procedures in place to ensure, in law and in practice, that all persons deprived of their liberty are guaranteed:

(a) Access to a lawyer without undue delay, and the right to meet in private and communicate with the lawyer representing them;[4]

(b) The right to be informed of the reasons for arrest and of the charges against them, and the right to inform a family member of their arrest within a short period of time following their apprehension.

3. In its follow-up replies, the State party confirmed the need for a comprehensive solution for ensuring legal assistance for the most disadvantaged.[5] Has the State party developed such a system of free legal aid?

4. Further to the Committee's previous concluding observations (para. 16), please provide information on the material, human and budgetary resources allocated for the effective functioning of the Human Rights Defender and on any additional resources granted to that institution to carry out its mandate as the national preventive mechanism under the Optional Protocol to the Convention. Please provide information on the activities and achievements of the Human Rights Defender with respect to the prevention of torture and ill-treatment during the period under review. This information should include statistics on the number and types of complaints received by the Human Rights Defender in its capacity as the national human rights institution, as well as the outcome of any complaints of torture and ill-treatment.

5. In the light of the Committee's previous concluding observations (para. 22), please provide updated information on the legislative, administrative and other measures taken to eliminate all forms of violence against women, including domestic violence and marital rape. Please also provide updated information on the protection and support services available to victims of gender-based violence in the State party. Please describe the results of the National Programme for the Prevention of Domestic Violence for the period 2006-2016. Please also provide statistical data, disaggregated by age and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences handed down in cases of gender-based violence since the consideration of the combined fifth and sixth periodic reports of Poland in 2013.[6]

6. With regard to the Committee's previous concluding observations (para. 24), please provide updated information, disaggregated by the age, sex and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of human trafficking since the consideration of the State party's previous periodic report.[7] Please also provide additional information on:

(a) Any new legislation or measures that have been adopted to prevent, combat and criminalize trafficking in persons;[8]

(b) The measures adopted to ensure that victims of human trafficking have access to effective remedies and reparation;

(c) The signature of bilateral or subregional agreements with the countries concerned, including neighbouring countries, to prevent and combat human trafficking.

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[4] Ibid., paras. 1 and 2; see also CCPR/C/POL/CO/6, para. 20.

[5] See CAT/C/POL/CO/5-6/Add.1, para. 7.

[6] See CCPR/C/POL/CO/6, paras. 3 (a) and 10 and CEDAW/C/POL/CO/7-8, paras. 24-25.

[7] See CEDAW/C/POL/CO/7-8, paras. 26-27.

[8] See CCPR/C/POL/CO/6, paras. 3 (d) and 14.

Article 3

7. With reference to the Committee's previous concluding observations (paras. 12 and 14), please provide information on the measures that have been taken to revise national legislation on refugees and asylum seekers to fulfil all obligations under article 3 of the Convention. Please also provide detailed information on the measures adopted to ensure that the specific needs of vulnerable persons seeking asylum in Poland, including victims of torture and/or trauma and disabled persons, are taken into full consideration and addressed in a timely manner.

8. In the light of the Committee's previous concluding observations (para. 13), and the State party's follow-up replies,[9] please provide information on how the State party will ensure that detention of asylum-seekers is used only as a last resort, and where necessary, for as short a period as possible, and further implement alternatives to detention in practice.[10] Please provide information on steps taken to ensure adequate conditions in detention facilities for asylum seekers. What measures have been taken to ensure that asylum seekers are not deported before the completion of their case?

9. Please provide information about the number of asylum applications received during the period under review, the number of successful applications and the number of asylum seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin. Please include information, disaggregated by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the previous periodic report. Please provide details on the grounds on which they were sent back, including the list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that may exist, on whether any appeals have been made and, if so, what the outcome of those appeals were.

10. Please indicate the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances or guarantees, whether given or received, and what measures with regard to subsequent monitoring have been taken in such cases?

11. Please detail what steps have been taken to improve the implementation of the existing standard operating procedures on the prevention and response to sexual and gender-based violence, with specific attention paid to measures intended to reduce violence and child marriages among asylum-seeking and refugee children. In that regard, please provide information on the measures taken to ensure that child refugees and asylum seekers who are victims of sexual or gender-based violence have the ability to file complaints that are promptly and impartially investigated, to receive protection and to receive compensation, including rehabilitation.

Articles 5-9

12. Please indicate the legislative or other measures that have been taken to implement article 5 of the Convention. Are acts of torture considered universal crimes under national law, wherever they occur and whatever the nationality of the perpetrator or victim? Please provide relevant examples of any prosecutions in that regard.

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[9] See CAT/C/POL/CO/5-6/Add.1, paras. 9-18.

[10] See CCPR/C/POL/CO/6, para. 13.

13. Please inform the Committee of any extradition treaties concluded with other States parties and whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties.

14. Please clarify what mutual judicial assistance treaties or agreements Poland has entered into with other entities, such as countries, international tribunals or international institutions, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

Article 10

15. With reference to the previous concluding observations (para. 17), please provide up-to-date information on educational programmes developed by the State party to ensure that all law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate whether the State party has developed a methodology to assess the effectiveness of training and educational programmes on the reduction of cases of torture and ill-treatment and, if so, please provide information on the methodology.

16. Bearing in mind the Committee's previous concluding observations (para. 15), please detail the training methodology and programmes used when instructing prison guards and other security forces in the use of electrical discharge weapons for direct contact, or any other less-than-lethal device or implement used by security forces. Please detail any incidents that have occurred as a result of using such devices, and provide information detailing the outcomes of any investigations into said incidents.

17. Please provide detailed information on the training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)?

Article 11

18. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous periodic report. Please also indicate the frequency with which these are reviewed.

19. In the light of the previous concluding observations (para. 19), please describe the measures taken by the State party to reduce prison overcrowding, including alternatives to imprisonment, both before and after trial.[11] Please provide statistical data, disaggregated by sex, age and ethnic origin or nationality, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention. Please inform the Committee on the measures taken to address concerns regarding prolonged pretrial detention (para. 9).

20. Please provide information on efforts by the State party to meet the special needs of minors,[12] women and persons with disabilities in detention. Please clarify the current policy regarding the use of solitary confinement and the application of means of restraint to

[11] Ibid., paras. 16-17.
[12] Ibid., para. 24.

prisoners. Please also provide information on the concrete measures taken by the State party to address concerns regarding the excessive resort to strip searches in prisons. Please detail the nature of indefinite detention within the State party, and how it is applied to convicts who have completed their sentences.

21. In paragraph 20 of its previous concluding observations, the Committee expressed concern at the prevalence of violence among prison inmates. Please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of law enforcement personnel, the number of complaints made in this regard and their outcome. What preventive measures have been taken?

22. Please provide disaggregated statistical data regarding deaths in custody during the period under consideration, broken down by place of detention, the sex, age and ethnicity or nationality of the deceased and cause of death. Please provide detailed information on the results of the investigations into such deaths and on the measures taken to prevent the reoccurrence of similar cases. Please indicate whether, in any of the cases, relatives received compensation.

Articles 12 and 13

23. As requested in the Committee's previous concluding observations (paras. 11, 18 (e) and 26), please provide updated statistical data, disaggregated by sex, age, ethnic origin or nationality and place of detention, on complaints of acts of torture and ill-treatment recorded during the reporting period. Please include information on investigations, disciplinary and criminal proceedings, convictions and the criminal or disciplinary sanctions applied. In this regard, please provide examples of relevant cases and/or judicial decisions.

24. In the light of the Committee's previous concluding observations (para. 18) and the State party's follow-up replies,[13] please indicate whether the State party plans to set up an independent and impartial body to investigate allegations of acts of torture and ill-treatment by members of the security forces and prison personnel. Please also provide information on the measures taken to establish an effective complaints mechanism for persons deprived of their liberty (para. 11).

25. Taking note of the Committee's previous concluding observations (para. 10) and the State party's follow-up replies,[14] please indicate whether the State party has completed the investigation into the complicity of Poland in rendition and secret detention programmes of the Central Intelligence Agency of the United States of America between 2001 and 2008, which involved torture and ill-treatment of persons suspected of involvement in terrorism-related crimes. If so, please indicate the results of the investigation. Please also indicate the measures taken to ensure that those responsible are prosecuted, and that all victims are able to access a remedy and obtain redress.

Article 14

26. With reference to the previous concluding observations (paras. 21 and 26) and the State party's follow-up replies,[15] please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to the victims of torture or their families since the consideration of the previous periodic report. This information should include the number of requests made, the number granted,

[13] See CAT/C/POL/CO/5-6/Add.1, paras. 19-46.
[14] Ibid., paras. 36-37; see also CCPR/C/POL/CO/6, para. 15.
[15] See CAT/C/POL/CO/5-6/Add.1, para. 47.

and the amounts ordered and those actually provided in each case. Please also provide information on any ongoing reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, and on the material, human and budgetary resources allocated for their effective functioning.

Article 15

27. Please provide examples of any cases that have been dismissed by the courts due to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

28. With respect to the previous concluding observations (para. 23), please inform the Committee about measures taken to ensure that women, especially victims of rape, who voluntarily decide to terminate their pregnancy have access to safe, legal abortions.[16]

29. With respect to the previous concluding observations (para. 25), please provide information on the measures taken to ensure that all crimes and acts of violence that target persons on the basis of their sexual orientation, disability or age are properly and promptly investigated and prosecuted.[17]

30. What measures have been taken to combat racially motivated crimes against persons of Arab, Asian and African origin and violence against persons belonging to the Roma community? Please also comment on reports about persistent manifestations of anti-Semitism, including physical attacks.[18]

Other issues

31. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism, and describe if and how those anti-terrorism measures have affected human rights safeguards in law and in practice. Please explain how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with the relevant Security Council resolutions, in particular resolution 1624 (2005). Please provide information on the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there have been complaints of non-observance of international standards; and the outcome of those complaints.

General information on other measures and developments relating to the implementation of the Convention in the State party

32. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the previous report to implement the provisions of the Convention or the Committee's recommendations. Such measures may include institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.

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[16] See CCPR/C/POL/CO/6, para. 12.
[17] Ibid., para. 8.
[18] Ibid., para. 6.